UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PIERRE BRAZEAU, ET AL,	:	
Plaintiffs,	:	
	:	Case Number:
vs.	:	AU:21-CV-00751
	:	
CASSAVA SCIENCES, INC., ET AL,	:	Austin, Texas
Defendants.	:	April 26, 2023

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TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

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COURT SECURITY OFFICER: All rise.

COURTROOM DEPUTY CLERK: AU:21-CV-00751, Pierre Brazeau, et al versus Cassava Sciences, Inc., et al.

THE COURT: Can we have appearances please.

MR. DROSMAN: Good morning, Your Honor, Daniel Drosman on behalf of plaintiffs from the firm of Robbins Geller Rudman & Dowd.

MR. KENDALL: Joe Kendall, Kendall Law Group in Dallas, on behalf of plaintiffs.

MR. LAVELLE: Good morning, Your Honor. Kevin Lavelle, also from Robbins Geller Rudman & Dowd, for plaintiffs.

THE COURT: All right.

MR. TALARIDES: Good morning, Your Honor. Alexander Talarides from Orrick, Herrington & Sutcliffe on behalf of defendants, and with me is the general counsel of Cassava Sciences, Chris Cook.

THE COURT: Very good. Thank you. Okay, we have a motion to dismiss that's been filed, so you may proceed. You should assume that I have carefully gone over all of the papers, all of the submissions. This case was, of course, not my case, but along with about 350 or 400 others, it's coming my way because my dear friend and colleague, Judge Yeakel, is

retiring, fully retiring. And so I have been asked to take on the more complex cases or at least some of the more complex cases because I've done a lot of complex litigation in my career as a lawyer and as a judge. All right, you can proceed.

MR. DROSMAN: Would you like to hear from defense counsel first, they filed the motion, I take that, Your Honor?

THE COURT: Yes. It's their motion to dismiss.

MR. TALARIDES: Good morning, Your Honor. Thank you. Your Honor, with your permission and understanding that you've read all the papers, I'm just going to briefly summarize what the genesis of this case is and then highlight the key points.

THE COURT: I think I have a pretty good idea. I went over the material that Judge Yeakel had and the other material and I'm aware of the various circumstances that led to the number of starts and stops and stock ups and downs, and ups and downs with respect to this Alzheimer's drug. What is the correct pronunciation of this drug?

MR. TALARIDES: Simufilam. Hard to say that a few times.

THE COURT: It's not the easiest in the world.

MR. TALARIDES: Your Honor, given that you're well aware of the circumstances, I'll just jump right to it, the two main points.

THE COURT: I'd like to hear the legal issues.

MR. TALARIDES: The legal issues here, and as you

know, Your Honor, this is governed by the Private Securities Litigation Reform Act that Congress passed in the mid '90s --

THE COURT: I'm familiar with it.

MR. TALARIDES: -- and which heightens the pleading burden, so this is not a typical case where the notice pleading requirements of Rule 8 apply.

THE COURT: No, that's right.

MR. TALARIDES: And the two key issues here I think is what is a factual allegation sufficient under the PSLRA to plead securities fraud and whether a plaintiff in a securities fraud claim can piggyback off allegations from others and assert those allegations which are hotly disputed and contested, unadjudicated and even uncharged and then assert them in a second lawsuit, this lawsuit, as a fact. And what we have here, the genesis of this lawsuit, as Your Honor knows, is the Citizens' Petition that was submitted to the FDA in August of 2021.

THE COURT: Well, there were several Citizens' Petitions submitted by the same people. There are various iterations of them submitted one, two, three, I think maybe four.

MR. TALARIDES: There was one and then a few supplements after. For brevity I'll refer to them all collectively as the citizens at issue.

THE COURT: They were ultimately dismissed, but not

because -- they didn't really get dismissed on the merits. They were dismissed because they couldn't provide the relief that was sought.

MR. TALARIDES: That's part of it, Your Honor, but importantly in the letter of the FDA, in the FDA's letter dismissing the petition, the FDA made the important point that by its own terms, the Citizens' Petition did not provide all the relevant facts to reach the conclusion that any data manipulation had occurred. And in fact, the Citizens' Petition and the authors were asking the FDA to engage in a fact-finding process. And so by its own terms, there was no finding or even -- the Citizens' Petition was framed and subsequently the authors, and I'll get to that in a minute, they explained that we're not saying that there's a finding of falsity here of a data manipulation. We've reviewed these published images, the Western blot images, and we think there are anomalies. We disagree, Cassava disagrees. But the author said we disagree and we're asking you, the FDA, that is charged with regulating and overseeing the research and development of this drug to engage in fact finding.

The FDA, one of the points it made was, well, you haven't provided us all the facts. In fact, you're admitting that you need more fact finding for us to take the action that you're asking, to which one of the actions was to halt the clinical trials. To date, the FDA has not taken any action or

halted the late-stage, phase three clinical trials of this drug. And it's interesting because the authors of the Citizens' Petition have -- and I'll just read a few quotes from what they've said since they filed, since they submitted the Citizens' Petition. They said that the Citizens' Petition does not -- this is, by the way, sorry, Exhibit 10, Defendant's Exhibit 10 which we submitted in our reply brief. It's judicially noticeable this is an opposition they filed in the Southern District of New York in a lawsuit against them. And they state that *"The Citizens Petition does not declare there have been falsified data, but asks the FDA to investigate to determine whether there's been falsified data."* This is on page 15 of Exhibit 10. It goes on. The Citizens Petition defendants', meaning the authors, opinion that these anomalies suggest possible data -- rather, the petition is merely that the authors' opinion that these anomalies suggest possible data manipulation.

THE COURT: Counsel, I want you to remember something, we are not here on a motion for summary judgment. Okay? If we were here on a motion for summary judgment, the Court would be in a position to analyze carefully, pursuant to the appropriate rubric, the evidence that is presented by both parties following both Fifth Circuit and Supreme Court law. This is a motion to dismiss. This is where the Court looks to the pleadings and certain matters that were appended to the

pleadings or a part of the pleadings, essentially. Okay. And so I am not in a position nor would it be appropriate for me to start weighing facts to decide who I think has the stronger case. The question really is did and have the plaintiffs laid out sufficient facts in a cognizable way to state a cause of action or causes of action pursuant to the law? That's all.

MR. TALARIDES: Your Honor, if I may, so that's correct, with the caveat that the PSLRA requires specific facts to establish --

THE COURT: Counsel, I have been a federal judge now for I think about 35 years and I'm well aware of the PSLRA. I mean, in addition to being a judge and handling these cases, I actually also teach complex litigation which includes class actions and securities litigation. So that doesn't make me the great expert in the world, I can assure you, but I do know what the standards are. Okay? So I'm well aware of the standards, but the standards are what I will look at in attempting to determine as accurately as I can whether the plaintiffs have set out the appropriate causes of action.

MR. TALARIDES: Then let me apply the facts --

THE COURT: You're suggesting that they've got a bunch of what you call puzzle pleading and so forth, and I understand what you're arguing. I've read all of this.

MR. TALARIDES: Your Honor, if I may, let me actually -- I'll apply -- with the understanding that let's

apply the factual allegations of the complaint to those legal standards that Your Honor is aware of.

THE COURT: All right.

MR. TALARIDES: So the core allegation here is that a series of statements about the preclinical and clinical research and results of Simufilam were false and misleading because the defendants failed to disclose that the underlying data supporting the research and the results was manipulated. And there's a well established --

THE COURT: Well, that isn't all. They also allege that there were a number of other things that your clients failed to disclose which included the fact that the lab where many of these things were analyzed was the same -- was the lab of the individual who was one of the participants. What was his name? Dr. --

MR. TALARIDES: Wang.

THE COURT: Yes, it was a Chinese name, Wang. So Dr. Wang's lab, and they're alleging that that should have been disclosed and wasn't disclosed and a number of other things. It wasn't just the manipulation of the data.

MR. TALARIDES: And I didn't mean to suggest it was just, I only say that the core. So there's a litany of statements, the vast majority of them relate to failure to disclose the fact of data manipulation. And there's four other statements, I believe, maybe five that are, as you point out,

one of them is the issue of the lab, four other statements that don't directly tie to the failure -- the alleged failure to disclose data manipulation. But to start with the core allegation about the failure to disclose data manipulation, there's a whole body of case law both within and without the Fifth Circuit saying that there's no duty to disclose uncharged, unadjudicated allegations of wrongdoing. Essentially that means you can't hold someone liable for failing to publicly confess something that is hotly disputed, has not even been charged, let alone adjudicated. And so that's what we argue is the case here.

The theory here for the vast majority of the statements is that the statements were false because we didn't go out and tell the market that we were potentially manipulating the data. And the law just doesn't count as that kind of argument. It's putting the cart before the horse. You can't hold someone liable for failing to confess to something when no one has even charged them of manipulated data yet. There's no indictment, there's no admission, there's no mea culpa here. There's investigations, but an investigation is just that, an investigation. It's not a finding of data manipulation and so to say that they were obligated to come out before any of this has been resolved and they are hotly disputing the fact of any data manipulation and to say that they were obligated to come out and say -- publicly confess we

did it, that's not what the law says.

THE COURT: I don't think -- you know, first of all, let me explain something. You've never argued before me in the past -- and this goes for both sides -- I believe in the Socratic method. Maybe that's from my 38 years of teaching. I'm trying to get to the answer and so I will ask you difficult questions.

MR. TALARIDES: Please.

THE COURT: And it's not an indication of how I'm going to rule. I once had an unfortunate situation where I did pretty heavily question Kathleen Sullivan, who was a very famous lawyer, used to be dean at --

MR. TALARIDES: Stanford.

THE COURT: Stanford, right. She was at Harvard before that, and she's now in private practice. She argued a case before me, I've known her for many years, and I asked her very tough questions and the client got so concerned about it that they settled the case and actually they settled it the day before I was going to rule in their favor in about an 80-page opinion. So it wasn't nasty questioning at all, it was just asking difficult questions that needed to be answered, and she answered them correctly and provided the information. So I don't want you to get the impression that because I'm asking you difficult questions that I'm somehow leaning one way or the other. All right?

MR. TALARIDES: I appreciate that, Your Honor.

THE COURT: All the lawyers that appear -- I'm sitting here in Austin for ten years, okay, and I've sat in San Antonio and I've sat all over the country. The lawyers that know me know that I do this, so they don't worry about it. But you don't, you haven't, so I wanted to let you know that ahead of time.

MR. TALARIDES: I appreciate that, Your Honor.

THE COURT: I don't want somebody walking out of the place going, *Oh, my God.*

MR. TALARIDES: I have done that and I have lost.

THE COURT: Well, you might lose here, I don't know. You might win.

MR. TALARIDES: So that's -- the one piece is there's --

THE COURT: Let me get back to the point I was going to make before I went off on this explanatory tirade here, that they're not necessarily alleging, although I think they are alleging that it was wrong, what happened was wrong, that they should not have used Wang's lab for these tests. What they're saying is that the fact that they did use Wang's lab for the test and that Wang was an interested person from their perspective because he was an investor -- I don't know whether he was -- not an investor, he was a participant in the company.

MR. TALARIDES: Consultant.

THE COURT: I think he had a part of the company too and there's some hint somewhere that he was going to get a bonus of some kind at some point. But in any event, he was an interested party, that that should have been disclosed because it would have provided more information upon which individuals could make a reasoned decision as to whether to invest. That's their argument, I think. They'll correct me if I'm wrong.

MR. TALARIDES: That's one of their arguments. It's one of the litany of alleged statements. I can answer that on that specific issue, the statement that's being targeted was that the reanalysis of the Phase 2b data was done by an outside lab and the allegation is that you failed to disclose --

THE COURT: That's at Quanterix or whatever it is.

MR. TALARIDES: No, that's another alleged misstatement. So as I said, there's about a bucket of 15, 20 alleged misstatements that deal with this failure to disclose that you manipulated data, that's the core theory. And then there's another four alleged misstatements, one of them is Quanterix, the other one is regarding Dr. Wang's lab and the other one is a statement by Mr. Barbier, the CEO, about his characterization of the FDA's letter, and the fourth statement is about one of the journals. Again, Mr. Barbier said that the journal exonerates them. So there's four separate statements and then the major bucket -- I say bucket as the core theory -- is all these other statements during the class period about the

research and the results, those were rendered false and misleading by the failure to disclose that the underlying data supporting these results was manipulated. And on the major, the core bucket here, the core theory, the first legal argument that we make and the standard to be applied is that there's no duty to publicly confess to something that has not even been charged, let alone found. And by its own terms, the underlying allegations here that support the idea that there's data manipulation are opinions. They're not facts, right, they're opinions of the authors of the Citizens' Petitions. They themselves say that these are our opinions and they ask the FDA to conduct fact finding to make that determination. They did not make a determination themselves. So how can -- and what the plaintiffs here are essentially asking the Court to do as a pleading matter under the PSLRA is to give more credence to the Citizens' Petition than the authors themselves have given to the Citizens' Petition because they're taking the Citizens' Petition, they, meaning the plaintiffs in this case, saying that's an established fact, there's data manipulation, when the authors of the Citizens' Petition say this is our opinion that there may have been manipulation, FDA, please investigate and look into it.

And there's the Fifth Circuit case that we cite in our brief, this is *Financial Acquisition Partners versus Blackwell.* And the Fifth Circuit there said, where the plaintiffs there

relied on an expert declaration, the opinions of an expert to support their allegations at the motion to dismiss stage on the 12(b)(6) motion, and the Fifth Circuit said that the opinions cannot substitute for facts under the PSLRA. And if the Citizens' Petition is an opinion, how can it be used as a fact, a fact of manipulation when it's merely an opinion being --

THE COURT: I don't think they're alleging that the Citizens' Petition itself was the manipulation. They're alleging that there are some, there are many more instances of alleged wrongdoing that they have that didn't come from the Citizens' Petition, but they're saying that the Citizens' Petition highlighted some of these areas. They're not saying -- your clients didn't prepare the Citizens' Petition, so, I mean, it would not be something that they did wrong. They're alleging that the Citizens' Petition highlighted, among other things, a number of areas which they think are actionable under the law. That's what they're arguing, not that the Citizens' Petition itself is a basis for their suit.

MR. TALARIDES: Well, they've taken the words and the allegation of the Citizens' Petition and they've put them into their own complaint.

THE COURT: Of course they have. That's what they've done, obviously, in certain aspects, but it doesn't mean -- the Citizens' Petition is not evidence, okay, it really isn't evidence. It's evidence that something was done or something

was said, and things that they did afterwards might be of concern because it would highlight some areas or issues and so that might be it. But there's no legal block to somebody taking evidence from a prior lawsuit or taking evidence from somebody -- let's say some reporter did a very thorough investigation and in that situation dug up a lot of evidence. We've seen that, it's going on right now in some of the Trump litigation. The New York Times did a big expose of former President Trump's company's finances and then people have picked up on that and are using some of that in their lawsuits. Now, maybe it isn't true. Maybe that isn't true, but there's nothing that prevents them from doing that, as long as they can prove it independently. They have to be able to prove it independently. It isn't just because it shows up in an article or it shows up in a Citizens' Petition, doesn't mean it's going to be admitted into evidence.

MR. TALARIDES: Your Honor, here we don't have evidence. What we have, as you have noted, the Citizens' Petition is not evidence and the subsequent --

THE COURT: At trial, yes. We're talking here about a 12(b)(6) motion, which is a motion to dismiss.

MR. TALARIDES: Correct, Your Honor. And but you do require factual allegations --

THE COURT: I'm not saying that the Citizens' Petition might not come into evidence at trial. It may for certain

purposes, I don't know. I'm not there yet.

MR. TALARIDES: Well, so as a legal matter and as we set forth in our briefs, as a legal matter, taking allegations -- alleging based on other allegations is legally insufficient under the authorities we've cited in our brief. We don't think that the PSLRA permits a plaintiff to circumvent the requirements of pleading factual particularity of fraud by taking the allegations of other people that are hotly disputed and dumping them into their own complaint.

THE COURT: I would agree with you that just simply taking bare allegations from some source and attempting to craft those allegations without any support is not sufficient. But that's not sufficient in any complaint, forget the PSLRA.

MR. TALARIDES: And let's talk about source here. Let's not forget, Your Honor, that the source here, the genesis here are two folks who initially did not disclose the fact that they stood to make massive amounts of money by the decline of Cassava's stock price, and they hid that from their initial Citizens' Petition.

THE COURT: I know there were allegations that they short-sold it?

MR. TALARIDES: Not allegations, a fact that they admitted to it.

THE COURT: Okay.

MR. TALARIDES: And initially when they first

submitted the Citizens' Petition, they certified, the attorney that submitted it on their behalf certified that they disclosed every fact that could be adverse to their petition itself. They did not disclose that they actually had shorted the stock and stood to make potentially millions of dollars by when the stock price declined. Only after when they were called out on it did they publicly announce their names and say, yes, we're the authors and they admitted that they actually made money off the decline of the Cassava stock price. So it's not just -- I mean, the source here and there's a whole body of case law in and outside the Fifth Circuit under the PSLRA that you have to look at the motives of the source, whether it's a short-seller report or an analyst report or in this case a Citizens' Petition, these were people who were financially interested in seeing Cassava being destroyed.

THE COURT: I couldn't agree with you more.

MR. TALARIDES: So the law that I mentioned earlier about no duty to essentially confess or publicly disclose the underlying wrongdoing that you're being accused of, there's -- my friends here cited several cases where a motion to dismiss was denied when that argument was made. And the difference in those cases between those cases and ours is that in each one of those cases, you had an enforcement action filed by the government, you had an admission or a mea culpe from the defendants, you had financial statements, you had a

whistleblower within the company actually coming out with percipient knowledge about what happened.

THE COURT: You're not suggesting, are you, that you can't maintain a viable securities fraud action unless the defendants somehow confess their wrongdoing?

MR. TALARIDES: Not at all.

THE COURT: That would sure cut back on the securities fraud actions we have.

MR. TALARIDES: Not at all. What I'm saying, Your Honor, is the law says that you need something more than just an accusation of wrongdoing in order to hold someone liable for failing to confess to that wrongdoing.

THE COURT: All right. I understand what you're arguing.

MR. TALARIDES: And again, I would point Your Honor to the Blackwell case about you cannot use the opinions of others as substitutes for facts in the PSLRA.

THE COURT: I've already told you I couldn't agree with you more. Simple opinions of somebody don't constitute sufficient facts to support a cause of action.

MR. TALARIDES: And to the original point you made, Your Honor --

THE COURT: Opinions.

MR. TALARIDES: -- you said this is not a summary judgment motion, you pointed that out very correct and that you

can't make a finding of fact. But I don't think it's disputed, there is no dispute, it's actually a judicially noticeable fact that the authors of the Citizens' Petition -- and you can take into account in a motion to dismiss judicially noticeable fact, the authors have explicitly stated they are only merely providing their opinion and they are not making a pronouncement of any actual manipulation. They've said it publicly, it's judicially noticeable. And so if you line it up with the Blackwell case that you can't substitute opinions with facts, I don't see how you can rely on the Citizens' Petition as a factual matter to come to the conclusion that they adequately pled that there's data manipulation.

I'll move on to the four other, as I call them, the remainder of the alleged misstatements as opposed to the core theory of failure to disclose. On the issue of the outside lab statements, the reanalysis of the Phase 2b was done by an outside lab, it was done at CUNY lab, so it was factually correct and it was not in any way contradicted by the fact that Dr. Wang conducted the analysis. In fact, it comported with the company's past practice in how it described what --

THE COURT: There was an allegation somewhere, counsel, that the work of one of these outside labs was greatly overstated, that they did a certain amount of work, but did not do what it was implied that they did.

MR. TALARIDES: That's a separate issue from you

failed to disclose that it was a -- essentially, the argument is that you failed to disclose that the reanalysis was done by an internal Cassava lab when it wasn't. The allegation is that you misrepresented which lab or who conducted the reanalysis by merely saying it was conducted by an outside lab, when in fact, it was conducted at an outside lab. It was conducted at the City University of New York, not at Cassava's labs.

With respect to the statement, I believe one of the alleged misstatements is Mr. Barbier had said that the FDA did not find evidence. The plaintiffs had the words *"did not find any evidence of fraud."* He actually didn't say that, he just said the FDA said, *"Where's the evidence?"* And as an initial matter, the notion that Mr. Barbier misrepresented the FDA letter is a bit odd in a securities fraud action based on fraud on the market theory where anything that's said publicly is supposed to be publicly known. The FDA letter is public, right? I mean, it speaks for itself. So you can't be misled by someone characterizing a letter, but fundamentally what Mr. Barbier was saying was it's true, the FDA said in page two of its letter that by its own terms *"The Citizens' Petition did not provide all the relevant factual information and was asking the FDA to conduct a fact-finding process to make that determination."* So that is true, it did not find any evidence of fraud.

Thirdly, I think the other alleged misstatement

relates to the Quanterix. It was a lab that generated some data here, and the statement the company said/made was that Quanterix generated the data. And then Quanterix came out with a clarifying statement saying we did not interpret it nor did we create the charts.

THE COURT: That was the comment I was referring to.

MR. TALARIDES: Yes, and the two statements when you line them up they're not inconsistent. Cassava didn't say that they interpreted the data. Cassava didn't say that they took the data, then created the data charts presenting the data. They said they generated the data and that's exactly what Quanterix did, they generated the data. So there was no inconsistency there, there's no falsity here.

I believe one other statement was that Mr. Barbier said that one of the journals, Journal of Neuroscience, exonerated us. And the plaintiffs allege that that was false. The Journal of Neuroscience said there was no evidence of data manipulation. It did say that. Now, Mr. Barbier characterized it the way he did, but that's what the journal said, it did not find any evidence of data manipulation.

But let me just shift now to the second prong because we've been talking about falsity. The major second component of the PSLRA which the plaintiff has to plead specific facts creating a strong inference of scienter or fraudulent intent, and it's not just any inference or even a plausible or even a

reasonable inference, it has to be a cogent compelling inference. And the plaintiffs' theory here is that, well, the company and its executives were motivated to pump up the stock in the short term because there was a cash incentive bonus that provided a payout to these executives if the company for trailing 20-day average reached a certain market capitalization. And the theory is that, well, you had the incentive to defraud investors, spike up the market cap of the company, get your payout.

The first point we make and I will just submit is that there's again a litany of Fifth Circuit case law saying this is an incentive that's routinely alleged in securities fraud cases. So the Fifth Circuit has said that the fact that the executive is incentivized to earn more compensation or the company wants to raise money in and of itself is not cognizable, is not a cognizable motive to plead fraud with PSLRA. But even in this instance, it goes beyond just the fact that this is a routine allegation that's been rejected by courts. The executives here have not been paid a dime under this cash bonus. And in fact, they couldn't have been paid a dime because the company didn't have the cash to pay it, so there was two components to this cash bonus plan. One, you hit the trailing average and you hit the market cap requirement, and two, the company has the cash to pay it out. The company did not have the cash to pay it out and has never paid it out,

which leads me to the second allegation here is that they say, well, the company was also incentivized to raise money, they raised over $250 million in an offering. And the theory, according to plaintiffs, is you pumped up the stock, collected $250 million to fill the company's coffers to pay out the bonuses. Again, the bonuses have never been paid, not a penny. That $250 million was all dumped into this drug.

And again, Fifth Circuit case law we cited in our briefs and elsewhere, the fact that this company stood by its product and poured in tens of millions of dollars into this product is the antithesis of a compelling inference of fraud. Why would you dump all this money into this product if you know it's worthless. It doesn't make any sense.

And thirdly, no one, not a single person during this time sold a single share of stock to profit from its fraud. And again, the Fifth Circuit and many other courts have said the fact that absence of stock sales is highly probative of an absence of an intent to defraud in a securities fraud action with PSLRA. No one sold at the inflated prices, no one made a profit over this and they're still dumping money into this drug. And the FDA --

THE COURT: I don't know that you ever want to use the term *"dumping money into this drug."*

MR. TALARIDES: I apologize.

THE COURT: Don't have to apologize to me. Doesn't

sound very attractive.

MR. TALARIDES: My point being, and I think Your Honor knows, is that they raised all this money and rather than do what the plaintiffs allege the purpose for the money, right, they allege the purpose of the money was to fill the company's coffers to pay these bonuses. They took the money and they invested it into this drug. They stood by it and they still stand by it. They're in the late stage of phase three clinical trials. The FDA has known about these allegations for two years now and has not halted the trials. Right? So they are standing behind this drug, they absolutely dispute the allegations.

And the last point I'll make on the scienter piece and we'll hear from my friends, they'll say, well, there's a theory under the Fifth Circuit that you can also infer fraudulent intent under the so called special circumstances test where you can take essentially the fact that the executive defendants are insiders of a small company and you can infer that of course they knew and of course they intended to defraud, they must have known because they're insiders, they run the day to day and it's a small company. But what the Fifth Circuit has said in the one peer case and many others in our brief is one of the components of that doctrine is that the falsity of the statement has to be readily apparent, to the executive.

How can you say that -- my argument is how can one say

that this is a readily apparent case of falsity when two years later and with all these investigations ongoing, if we're so readily apparent, then we would have heard by now, yeah, there's been data manipulation. We don't have that. No one has come out and said -- there's been no finding, there's been no charge, there's no indictment, there's nothing. All we have are the opinions of third parties that are financially motivated to make that allegation.

And so it's not readily apparent and there's four agencies investigating this thing for two years now and they haven't come to that conclusion. So that in and of itself precludes the application of the special circumstances doctrine.

Your Honor, if I may, any other issues you'd like me to address, otherwise, I'd like to reserve a few minutes.

THE COURT: Sure, of course.

MR. TALARIDES: Thank you.

THE COURT: You bet. By the way, I usually mention this at the beginning and I always do it during a jury trial, you see me sipping something here, I am not up here luxuriating with a gourmet coffee while you're down there working away. Many years ago I had a small vocal cord cancer that I had to have radiation to my vocal cords at the time. I'm fine, it's been decades, but if I talk too much, I have to keep my vocal cords moistened, otherwise, I'll sound like Bill Clinton, if

you have ever heard him, raspy.

MR. DROSMAN: Join the club. I'm getting over a cold, so I may sound a little like Bill Clinton.

THE COURT: That's all right.

MR. DROSMAN: I want to start with what you had referred to earlier and what defense counsel ended with which is the allegations which do not involve data manipulation because although defense counsel says our core theory is data manipulation, there are a number of statements that have nothing to do with data manipulation which are exceedingly strong and not only are obviously false and misleading -- and by false and misleading, I'm referring to instances where defendants failed to provide the whole truth.

The PSLRA, as you know, has sort of grafted in this precept that a half truth is a whole lie. And by doing that, what they've said is you can't -- we're not looking at little truths. Sure, it was an outside lab. That's not the point of the PSLRA. PSLRA says that when you speak you have to provide all the facts such that your statement is not misleading, and that's what defendants have failed to do in this case.

So let's talk about those instances in which they have made false and misleading statements that do not relate to data manipulation and then we'll turn to data manipulation.

First, the statement by defendants at the very beginning of the class period regarding the Phase 2b reanalysis

that it was performed by an outside lab. This is an interesting statement, it starts our class period, as you know. Defendants had previously gone to Lund University laboratories in Sweden to have their Phase 2 results analyzed. And they came back, Lund University, a very prestigious lab, came back and said, you know what, we don't find any efficacy, it's really not any better than a placebo. So they said it was wrong, that's incorrect, we have to go back and have those results reanalyzed. So they turned to Dr. Wang to have those results reanalyzed, and he reanalyzed the results. And what do you know? He came back and said, Oh, the Phase 2b results do show efficacy, there is an improvement in cognitive functioning.

And so that was the big announcement that starts our class period in September of 2020 where they tell investors we had our Phase 2b results analyzed by an outside lab. Now, when I hear outside lab, I think dependent lab, maybe not. I certainly don't think that it's analyzed by a researcher who has a financial interest in the company. And it's not just a financial interest in the company, Wang was a member of the in-house product development team. He had a financial conflict of interest, he held stock options and participated in a bonus plan. And those allegations are in 57, 58 paragraphs, paragraphs 80, paragraphs 106 through 111 and 287F. There's no question that Wang was conflicted. So that's interesting

information that a reasonable investor would want to know. Hey, this reanalysis was performed by a guy who had a financial interest in the company. Not there. And what's particularly interesting about this information is sometimes when company executives make false statements, they could say, Well, it's just a mistake, I didn't know, I was wrong.

But this particular statement was misleading in a way that leads you to believe that it was made with the requisite mental state with intent to defraud because, think about it, he knew, Barbier knew when he made this statement about an outside lab that Wang would have financial conflicts that he had stock options and was participating in a bonus plan. He knew that, and he omitted that information. That is the hallmark of scienter. So I know that falsity and scienter are often analyzed separately, but there is a significant overlap in several cases, and this is one of those cases.

THE COURT: Are you saying that in every stock offering, in every statement of a company about how the business is going or what they predict is going to happen in the future, they have to talk about every stock option offered to every executive? I mean, I don't think so.

MR. DROSMAN: No, I agree with Your Honor. Certainly not, it would not be that broad. But this particular case where you make an announcement about an important analysis or reanalysis of results which previously found no efficacy and

now all of a sudden there's efficacy and it was performed by an outside lab, you are obligated to provide the facts such that that statement is not misleading. And one of those facts is that the person who ran that outside lab, Dr. Wang, had major financial interest in the company, stock options, a bonus plan participant, member of the scientific advisory. I mean, this guy, he might as well have been a member of the Cassava executive team. He and Dr. Burns, who was employed by Cassava, go back 20 years writing articles together. And this guy had a major, major financial interest in the company. So that is misleading. That's what I'm alleging, Your Honor. Not that in every instance you have to provide all -- and you know, this is material, and that's the test, really, is is this information material. Is this something a reasonable investor would want to know? And that's the test. And certainly this fact about his financial interest is material, and, therefore, it needed to be disclosed.

You turn to, you know, Barbier himself had said, well, it's important -- and we allege this in the complaint at paragraph 454. He says, *Yeah, financial interest is important, it needs to be known.*

So if somebody has a financial interest, that should be disclosed. In fact, we have defense counsel criticizing the officers of the Citizens' Petition for failing to disclose their financial interest. It's obviously an important fact.

And when Bob Gussin who is a board member was asked about this and said, you know, asked about Wang's conflicts and his financial involvement with Cassava, he said, *"It's not typical"* and he *was "not thrilled with it."* That's what the board member said at paragraph 104.

So then we move to another misleading statement, the defendant's statement that the P-Tau data was generated by Quanterix. They say, well, that's literally true. Of course, that's not the test under the applicable laws the Fifth Circuit made very clear in its recent Six Flags opinion. Literal truth is not the test. The test is were there sufficient facts to make it not misleading. And here you have Quanterix two days after that announcement coming out with their own clarification that, hey, we didn't analyze these results, we didn't examine the results.

Now, if Quanterix felt it necessary to come out with a clarification two days later, certainly they felt that that statement needed more context and that it was misleading. And what do you know? When Quanterix comes out with its clarification, the stock price drops. So investors obviously felt that it was important as well.

And then defendants also falsely stated that the original data was submitted to journals investigating the class period allegations. This was part of their coverup where a journal would come out and say, hey, look, we're revisiting

these articles because of the significant allegations that have been made about data manipulation, about lack of integrity, trustworthiness and so forth. The journal said, *We want to review the original data.* And Barbier came out and said, *We provided the original data to the Journal of Neuroscience, and Neuroscience, in order to complete their investigation.* In fact, as we allege in our complaint, the original data was never provided. That was just a false statement. They knew it was false because they had been e-mailing with Wang who in one case said, *Oh, I think it was destroyed, that original data.* In another case, he couldn't find the original data. And Barbier admits that in order to determine whether there was data manipulation, fabrication, falsification, you need to look at those original x-ray slides. Not provided to the Journal as they said. And when it became clear initially the Journal -- Neuroscience came back and said, *Well, we didn't find any manipulation.* And then everybody said, *But you didn't have the original data.* So that Neuroscience went back and said, *You're right, that wasn't original, we're going to go ahead and change that to an expression of concern,* which is very rare in academic literature, means we have a real concern about the integrity of this paper until CUNY, the City University of New York, completes the investigation. And that's the way it stands right now.

And then finally, Barbier said there was no evidence

of fraud according to the FDA. And Your Honor spoke about this earlier. And that is absolutely false. The FDA never said there was no evidence of fraud as we allege and, in fact, quote the FDA's letter in paragraph 286, on page 87 of our complaint. What they said was -- sorry, that's the incorrect quote. But what they said was *"The sole reason that we are going to deny the Citizens' Petition is because there is no basis for relief on the grounds that the Citizens' Petition cites."* They said, *"This is not a determination as to the accuracy or reliability of the allegations that were made in the Citizens' Petition."* That's what it says. So it's absolutely false for Barbier to come out and say that the FDA found that there was no merit to the allegations. That's not what the FDA said.

Let me turn now to this issue of opinion versus facts. We heard quite a bit about that. We hear quite a bit about that in the briefing as well. These allegations are not conclusory opinions. A conclusory opinion, Your Honor, would be defendants engaged in data manipulation. Defendants engaged in data falsification. That's a conclusory opinion. We have something very different here. As you know, an opinion is something like Mexican food is better than Chinese food. It's incapable of objective verification. We have the ability to objectively verify the allegations in this case, and in fact, the complaint is littered with evidence of data falsification and data manipulation.

Let me just talk about -- there are so many, but let me talk about a few instances and talk about the evidence that supports them. We have plaintiffs alleged that defendants manipulated Cassava's preclinical studies by misrepresenting Western blot analyses in a study about Simufilam published in the PLOS One Journal and authored by Burns and Wang. And here is the evidence supporting it. First, the authors of the Citizens' Petition provided photographic evidence that images were spliced and that there were identical images for what are reported as different experiments. And that's in paragraph 149.

And then you have Dr. Elizabeth Bik, she's an expert in image deduplication and manipulation, and she corroborated this analysis. And Dr. Bik provided additional photographic evidence that the study contained two blots that look identical, and those blots are in our complaint, and that there are background transitions suggestive of splicing. This is manipulation. Splicing is intentional conduct. It's not a mistake you make. Notably, Dr. Bik has no financial interest at all in Cassava. And in a macro analysis of 190 of Dr. Bik's cases, only two journals out of 190 concluded that nothing was missed. That's a 99 percent accuracy rate that she has.

Then we have more. Dr. Mike Rossner, a Ph.D., a former managing editor of the Journal of Cell Biology and an expert in analyzing biomedical images for data manipulation,

independently corroborated this finding. Dr. Rossner concluded that the two samples were, in fact, identical even though they purportedly came from different experiments and that the images had been altered from the original.

And then, finally, we have PLOS One, that journal, retracting its journal article. So that's the evidence behind that one allegation. It is not accurate at all to say that plaintiffs' allegations are conclusory. They're not. They're based on solid photographic evidence by multiple sources, the vast majority of whom have no financial interest in this case.

I'm going to give you one more example. We've got plaintiffs allege that Cassava manipulated the Phase 2 biomarker results at the Alzheimer's Association International Conference, the AAIC. And hear the evidence supporting that allegation, we have Dr. Aaron Fletcher, he's a Ph.D. of Bios Research, and he identified a missing data point, a missing data point, from a 100 milligram treatment group that was then grafted into the placebo group and determined that missing data point should have reflected a 150 percent change from baseline. If the missing data point, that missing data point is inserted, the treatment groups would not be statistically significant and different from a placebo. And then in addition to Dr. Fletcher, we have Dr. Bik who also determined independently that there was a missing data point which would have changed the reduction of P-Tau 181 levels -- and remember, the lower

the P-Tau the better when you're researching Alzheimer's -- from negative 17 percent to negative 3 percent.

And ultimately, defendant Barbier himself conceded that there were errors in the AAIC presentation and that the graphic that was shown was incorrect. So that's the evidence that we have on those two. I could go on and on, Your Honor, but I'm not going to.

You know, what other evidence do we have supporting our allegations? We've got ten prominent experts in neuroscience, including Dr. Sudhof, a Nobel laureate from Stanford, Dr. Roger Nicoll from U.C. San Francisco, which I understand is one of the preeminent medical schools in the country, that and maybe Johns Hopkins and Harvard.

THE COURT: They're the people that did my throat.

MR. DROSMAN: Is that right?

THE COURT: Yes.

MR. DROSMAN: There you go. You went to the best. And Dr. Don Cleveland from U.C. San Diego. They examined Cassava's research papers. These guys don't have any financial interest in the company.

THE COURT: Can I spin you just a little bit here to the individual -- you have also sued people individually.

MR. DROSMAN: Yes.

THE COURT: I understand what your allegations are against all of them, but I'm having a hard time discerning what

you're really arguing Mr. Schoen did. S-C-H-O-E-N, is that how he pronounces it?

MR. DROSMAN: Correct.

THE COURT: There's not much there.

MR. DROSMAN: I think that's a good point and I want to go ahead and address that, Your Honor. He started in 2018, okay. He had been at the company for a couple of years by the time the class period starts. So let's talk about this announcement, this statement that starts the class period where they announce the reanalysis of the Phase 2 results and they neglect to mention that this outside lab was run by a guy named Dr. Wang who had financial interest in the company. Now, both Barbier and Schoen signed off on that statement. That was a statement that both of them made. Now, there's no question or little question that Schoen knew, had scienter. We know that's false because it's certainly misleading, and there's no question that Schoen knew about Dr. Wang. He was their primary independent researcher. Remember, Cassava had no inside labs, they only used an outside lab and they used Dr. Wang. So certainly Schoen knew that Dr. Wang was the outside lab referenced in the statement. His scienter there is pretty unequivocal. The same thing with that Quanterix statement. He knew about Quanterix, this is a small company. In fact, Your Honor, when the class period starts --

THE COURT: You can't just say, well, he must have

known about Quanterix. It's got to be more than that.

MR. DROSMAN: Sure, sure. What the Fifth Circuit says in that new Six Flags case is they say there's a number of factors that you should look at when you're assessing a scienter and they call it a special circumstances. It's also referred to as the core operations doctrine. Basically what they say is you have a very small company, you have a product that is very important to the company, and then you have statements that are made that are internally inconsistent. And we have those facts in this case such that Schoen would have scienter. We have a company that started when it had six people at the beginning of the class period, I think it grew to eleven, so essentially half the company is named as a defendant in this case. We have a one-product company. This essentially was their only product. Everything revolved around the success or failure of Simufilam.

And finally, you have internally inconsistent statements. We have them making the statement about Wang, refraining from disclosing his identity and then previously they disclosed his identity when they talked about Wang. You have the Quanterix statement where they basically say that Quanterix provided the data. And Quanterix comes out and says, *No, we didn't provide the data -- I mean, we didn't assess the data, we didn't examine the data, we just provided it, so let me disaffuse you of that.*

You have the statements about the FDA's resolution of the Citizens' Petition. Absolutely false and misleading, no reason to believe that Schoen didn't know that. I mean, Schoen would have known that as well as anybody by reading the Citizens' Petition that the FDA did not exonerate the company from fraud.

So whereas Schoen was not -- you're correct that Schoen was not a medical researcher and he was not involved in authoring the particular papers like Barbier, like Burns. And as you know, Dr. Friedmann has died, but Friedmann was also a participant in authoring those particular studies. Schoen certainly is liable for the statements relating to the outside lab and also the other statements, given the fact that he signed these statements and there's the special circumstance doctrine.

And then, of course, the motive allegations which, as Your Honor is aware, are not required in a securities fraud case, they're not required in a criminal case, but they certainly support an inference of scienter. And the fact that they ultimately were not paid their bonuses is certainly not probative because in the Six Flags case, the defendants didn't get their bonuses either. But the Fifth Circuit found that they didn't get their bonuses because the information about the fraud derailed that. And that's exactly what happened here. They would have gotten their bonuses if it were not for the

fact that the Citizens' Petition came out and then the additional evidence that we've discussed continued to come out and the stock price went from $163 down to $16 a share at the end of the class period, a tremendous collapse. That's what derailed the bonuses. They also did these two public offerings. Remember, there's two of them --

THE COURT: My recollection is it got up to about 120-some dollars a share at one point?

MR. DROSMAN: I think it's up to 163.

THE COURT: I remember the 120. Did it get all the way up to 160?

MR. DROSMAN: Yeah, it did.

THE COURT: And it's now at 16?

MR. DROSMAN: Yeah, I think it went down to around $16 at the end of the class period -- $18, sorry. And Your Honor, it's 146 was the high point, not 163. I apologize, 146. Sorry. I think I transposed those two numbers.

THE COURT: I was a little off. Not too bad.

MR. DROSMAN: You were closer than I was.

THE COURT: There was one point where they were 126 and then another statement was made and it dropped.

MR. DROSMAN: Correct.

THE COURT: That's where I got the 126 from.

MR. DROSMAN: So unless Your Honor has any additional --

THE COURT: No, I don't.

MR. DROSMAN: Thank you very much.

THE COURT: Believe me, the Court is going to look not just -- I mean, very few federal courts anymore provide opportunities for oral argument, I'm afraid to say. It's very difficult to get oral argument. Because I was a trial lawyer, I believe in oral argument. Sometimes it can clarify things and bring out issues that are of importance, but that doesn't mean that the written documentation and argument that is supported in the record isn't helpful to the Court and that's what most judges, in fact, rely on. This is a kind of case where I just absolutely insist on oral argument.

MR. DROSMAN: Well, I appreciate it.

THE COURT: I think that it's helpful to me and it also provides a public forum so that these allegations are publicly heard. Sir, you wanted a couple minutes?

MR. TALARIDES: Please, if you indulge me.

THE COURT: Of course.

MR. TALARIDES: Thank you, Your Honor. I'm just going to make a few points addressing some of my friend's points here. On the motive allegation, I heard that they would have gotten their bonuses but for the fact that the stock price collapse derailed their bonuses. Their complaint actually contradicts that. The complaint alleges, as the stock plan states, that if the stock price hits a certain point for 20

days, the bonus kicks in and they're entitled to it if the company has the cash. So the stock price decline did not derail their bonus. It's not the reason they didn't get their bonus. The reason they didn't get the bonus is because they were investing the money that they raised with the offering that it's used as a motive for a fraud in the drug that plaintiffs allege is worthless. So the stock price decline did not derail the bonus. They haven't taken a single penny from this bonus.

The Six Flags case that my friend mentioned, the Fifth Circuit there said that the fact that the bonus was not paid did not negate an inference of scienter in that specific case because the bonus was achievable. And here, the complaint itself alleges that it was not achievable because they're alleging that the bonus was over a hundred-something million dollars and they allege in their complaint that at the time that it was locked in, they didn't have the cash to pay and it couldn't have been achievable and it couldn't have been paid out.

Very quickly, Your Honor, on defendant Schoen, it's a very lengthy complaint. I think you would be hard pressed to find his name mentioned more than a few times. He's named merely because he signed a few documents and he's the chief financial officer. The case law in the Fifth Circuit is pretty well established that the group pleading doctrine where you

just lump all the insiders together and assume that they have a fraudulent intent is not enough, and I submit that for any defendant, they haven't -- particularly for Mr. Schoen, other than being the chief financial officer and he signed a few 10Ks or Form 10Qs, there's nothing in the complaint other than naming him.

On the Quanterix alleged statement, Cassava never said that Quanterix analyzed the data as the plaintiffs allege. Cassava never said that Quanterix interpreted the data as Quanterix came out with that press release. Cassava said they generated the data, that's exactly --

THE COURT: Quanterix came out with a clarification for some reason. Why did they feel the need to come out with a clarification?

MR. TALARIDES: Well, that can't be the reason why -- you'd have to ask them, I don't know. But the statement generated is factually correct. And there's nothing in the surrounding text of that statement where Cassava said that Quanterix generated data where they said that they interpreted the data or analyzed it. They never suggested or said that.

THE COURT: I will certainly look at that again.

MR. TALARIDES: And then one point, I think the argument is that the allegations here are not conclusory opinions. They are opinions, though, and the Fifth Circuit said opinions don't get you to fact. And --

THE COURT: I don't think that that was the gravamen of what he was suggesting. I think he was suggesting that they were laying out facts, not conclusory opinions. Am I right?

MR. DROSMAN: That's correct, Your Honor.

THE COURT: I don't think he was suggesting that he -- he wasn't going to acknowledge that his complaint was made up of opinions.

MR. TALARIDES: I'll note that Mr. Rossner, he's a retained expert by the plaintiffs. Ms. Biks, she's also paid. That's her job is to do this, right, to point --

THE COURT: We have experts in every case. I'm sure you will have experts if we go forward.

MR. TALARIDES: My point being, though, Your Honor, is is that Fifth Circuit said you can't rely on expert opinions to plead securities fraud.

THE COURT: Of course not.

MR. TALARIDES: Your Honor, thank you.

THE COURT: Thank you very much. Look, this is not an uncomplicated case and it's a case of some interest and importance, obviously. Alzheimer's is a devastating disease and every time there is any type of suggested breakthrough in either the treatment or identification of Alzheimer's, it makes the national news. I don't know whether this drug ever made the national news at all. I've never seen anything about it, but I know other Alzheimer's potential treatments have made the

national news. And so, yes, I mean, I can understand why there's some interest in this case, but I treat this case like I do any other case. My work here in this motion is to determine whether the plaintiffs have sufficiently pled, pursuant to the Private Litigation Reform Act and the general standards of the Federal Rules of Civil Procedure which aren't completely abrogated, the causes of action for which they've alleged.

And I think we also have to remember that in a motion to dismiss, even though we have the Private Litigation Reform Act, the Court must view facts in a light most favorable to the nonmoving party. In some ways these two clash to a degree and legal experts have talked about it, talked about that issue and I think even some Supreme Court justices. I don't know whether in opinions, but I know I did hear a Supreme Court justice, might have been either a -- I don't remember whether he's still there or if it was a former justice talk about the conflict, you know, when you add these very stringent pleading rules, and it happens in fraud also, just general fraud under Rule 9, you add these very stringent pleading rules and yet you also say, well, you have to infer the facts in a light most favorable to the nonmoving party, but also apply these rules and, of course, the Court has got to do that.

There have been many instances in my career in both complex cases and noncomplex cases where I have denied motions

to dismiss and ultimately granted the motions for summary judgment where the facts are able to come in and parties are able to make an effort to meet that burden, which because of more recent -- recent enough so that it happened during my career as a lawyer, change the standards such that the parties now have to pony up real facts. They can't just sit back and say, well, there's genuine issues of material fact here, Judge. They actually have to show those genuine issues of material fact.

Now, the Fifth Circuit has a kind of a general rule. I don't know whether it's laid down in black and white anywhere, but the general proposition and I think most Circuits do is that when you have a first motion to dismiss, if that motion is granted in whole or in part, generally the Court is advised to give the nonmoving party the opportunity to amend. And we do that always in pro se cases, but we do it also in cases where the parties are well represented. I just say this because I don't know whether I'm going to grant or deny this motion in whole or in part, but if I do, then you will get 30 days to amend. I always do that, in the interest of justice. I mean, this isn't a game, you know, we're trying to get to the right and just result. And also, I'm pretty quick in getting these orders out. A lot of work has been done. My law clerk has looked at it very carefully and given me some excellent research. I've looked at it very carefully. I can get the

documents now myself. In the old days, you couldn't do that, but I can actually log in just like the lawyers can and pick up all the exhibits and all the documents off the Internet. And so I look at these things myself as well, of course. But I'm hoping to get something out to you in the next couple of weeks, which is very short for a motion of this kind. I should be able to do that. I want to try to get this case moving. It's not a particularly old case. When was this filed? In '21?

COURTROOM DEPUTY CLERK: Yes.

MR. DROSMAN: That's right, Your Honor.

THE COURT: So it's a year old. By Federal Court standards during the pandemic, this one is not out of diapers yet. We've got cases where they were stayed, civil cases that were stayed because of the pandemic that are very old. But we're trying to move those through the system as quickly as we possibly can. Many of those cases settle, of course, and it makes it much easier for us, but some of them don't and we have to try them and so we're in court all the time.

I had to go back to San Antonio, I had hearings here yesterday, I had to go back to San Antonio, I got up at 4:00 in the morning and drove back here so that we could have our argument today. And I'm going to turn around and go right back. So even though I have a chambers and courtroom here, obviously, you saw my name on the door, all of the big cases that I'm going to be getting, all of them, some of them have

been transferred, but all of them haven't, so I'm still trying to clean up San Antonio, but I'm going to be doing most of my work here. So thank you all very much. I try to put out a reasoned order, it's not going to be a hundred pages, doesn't need to be on a motion to dismiss. Let me say this, I do follow the same practice that Judge Yeakel does. If I deny the motion to dismiss and the party -- let's say I deny it in part, okay. The party has the right to file an amended complaint, but that amended complaint will only go to cure those issues where I have denied it. If the party wishes to file another motion to dismiss, it can only be as to those issues. Okay? We wouldn't get a full on let's rehash everything we've talked about before, okay. Frequently what happens is that the parties in a situation like that decide, you know, it really isn't worth it to file another motion to dismiss, let's just get to the meat of this and file a motion, you know, do some discovery and file a motion for summary judgment. That's frequently where we end up.

I have a large case here where there was a lot of crazy pleading here and there and nobody was -- I don't know what happened with this case. I wiped the slate clean and I ordered cross motions for summary judgment and the lawyers both said yes, that's what we need to do here. What was the name of that case?

COURTROOM DEPUTY CLERK: The Courthouse case.

THE COURT: Oh, Courthouse News, yes. It was a press access case, interesting First Amendment case. But both sides said yes, that's exactly right, this is what we need to do instead of all these bric-a-brac motions, we need to get right to the motions for summary judgment because we really don't dispute the facts, we just think we should win on our facts. And that's where we go. So I would urge you to think about that if that's where we are. All right?

So we'll try to get this out. If you don't get it in two weeks, you'll get it in three weeks for sure, but I'm going to try to get it out within three weeks because we have done significant work on this already. Thank you so very much. I do appreciate you being here and safe trip back home.

MR. DROSMAN: Likewise to you.

(10:23 a.m.)

* * *

(10:25 a.m.)

THE COURT: I am going to refer you to Magistrate Judge Hightower. Magistrate Judge Hightower will give you all the pretrial dates and so forth. We'll do this even though -- I'm not prejudging your motion, but they're going to have an opportunity to amend, and so in any event, we're going to need to set these dates. And it's better to set them now and get them on my calendar. Waiting even two or three weeks, in fact, waiting one week or two weeks to get a date with Judge

Hightower might be a disaster because Judge Yeakel leaves at the end of April and then several hundred cases come my way from him, and a hundred from Judge Pitman. It's going to be something.

MR. DROSMAN: We previously filed these joint scheduling recommendations. Should we refile that with her, Judge Hightower?

THE COURT: No, no, it's in the record. She'll set the actual dates. There aren't really any actual dates. What you've got is kind of -- I've seen that. What you've got is, well, we want a certain number of days between this and a certain number of days between that.

We need actual dates and we need to get those dates in the calendar and get you there before the trains start pulling out. I use trains because it's one track, you get behind it and you're stuck. And we don't want you to get stuck. Thank you so very much.

(10:27 a.m.)

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date signed: May 4, 2023

/s/ Angela M. Hailey

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